Supreme Court, U.S.
FILED
NOV 6 1992
OFFICE OF THE CLERK

No. 92-655

In The

Supreme Court of the United States

October Term, 1992

TINA BARRON,

Petitioner,

v.

FORD MOTOR COMPANY OF CANADA LIMITED, a wholly owned subsidiary of FORD MOTOR COMPANY, U.S.A., a foreign corporation,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

JOHN M. THOMAS
Counsel of Record
Office of the General Counsel
Ford Motor Company
Three Parklane Boulevard
1500 Parklane Towers West
Dearborn, Michigan 48126-2568
(313) 322-6743

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether certiorari should be granted to determine whether, under North Carolina law, seatbelt evidence is admissible in a crashworthiness case.

2. Whether certiorari should be granted to determine whether Florida choice of law rules required application of Illinois product liability law, and if so whether Illinois law differs significantly from North Carolina law.

RULE 29.1 STATEMENT

The subsidiaries of Ford Motor Company required to be disclosed under Supreme Court Rule 29.1 are listed in Appendix A. Ford Motor Company is the parent company of Ford Motor Company of Canada, Ltd. Ford Motor Company of Canada, Ltd. does not have any subsidiaries that are not wholly owned.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
RULE 29.1 STATEMENT	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	1
I. THIS CASE INVOLVES NO CONFLICT ON ANY ISSUE OF FEDERAL LAW; IN FACT, THERE IS NO CONFLICT ON ANY ISSUE OF STATE LAW	1
II. CERTIORARI IS NOT APPROPRIATE TO DETERMINE WHETHER THE SEVENTH CIRCUIT CORRECTLY APPLIED STATE CHOICE OF LAW RULES	4
CONCLUSION	8

TABLE OF AUTHORITIES

Page

CASES

Barron v. Ford Motor Co. of Canada Ltd., 965 F.2d 195 (7th Cir. 1992).....1, 5

Bishop v. Florida Specialty Paint Co., 389 So. 2d 999 (Fla. 1980).....5

Daly v. General Motors Corp., 20 Cal. 3d 725, 144 Cal. Rptr. 380, 575 P.2d 1162 (1978).....3

Hagwood v. Odom, 88 N.C. App. 513, 364 S.E.2d 190 (1988).....2, 3

Hertz Corp. v. Piccolo, 453 So. 2d 12 (Fla. 1984).....5

LaHue v. General Motors Corp., 716 F. Supp. 407 (W.D. Mo. 1989).....3

Lowe v. Estate Motors Ltd., 428 Mich. 439, 410 N.W.2d 706 (1987).....4

Miller v. Miller, 273 N.C. 228, 160 S.E.2d 65 (1968).....3

Morrison v. Sears, Roebuck & Co., 319 N.C. 298, 354 S.E.2d 495 (1987).....7

Proprietors Ins. Co. v. Valsecchi, 435 So. 2d 290 (Fla. App. 1983), *later appealed* 502 So. 2d 1310 (Fla. App. 1987).....6

Ruhlin v. New York Life Ins. Co., 304 U.S. 202 (1938).....2

Seese v. Volkswagenwerk, A.G., 648 F.2d 833 (3rd Cir.), *cert. denied* 454 U.S. 867 (1981).....2, 3

State Farm Mut. Auto. Ins. Co. v. Olsen, 406 So. 2d 1109 (Fla. 1981).....5, 6, 7

Suvada v. White Motor Co., 32 Ill. 2d 612, 210 N.E.2d 182 (1965).....7

TABLE OF AUTHORITIES – Continued

Page

STATUTES AND RULES

N.C. Gen. Stat. § 20-135.2A(d) 3

Sup. Ct. R. 17 (now Sup. Ct. R. 10) 4

OTHER AUTHORITIES

Restatement (Second) of Conflict of Laws § 146 5

Respondents Ford Motor Company of Canada Ltd. and Ford Motor Company (collectively referred to as "Ford") respectfully request that this Court deny the petition for a writ of certiorari by which Petitioner Tina Barron, the plaintiff in a product liability action, seeks review of a decision of the United States Court of Appeals for the Seventh Circuit. The petition should be denied because it raises only questions of state law.

STATEMENT OF THE CASE

The Seventh Circuit's decision accurately states the facts and procedural history of this case, and Ford incorporates that opinion by reference.

REASONS FOR DENYING THE WRIT

I.

THIS CASE INVOLVES NO CONFLICT ON ANY ISSUE OF FEDERAL LAW; IN FACT, THERE IS NO CONFLICT ON ANY ISSUE OF STATE LAW

The first two reasons which Petitioner offers for granting the writ are actually the same: a purported conflict between the Seventh Circuit and the Third Circuit concerning the admissibility of seatbelt evidence under North Carolina substantive law. *Compare Barron v. Ford Motor Co. of Canada Ltd.*, 965 F.2d 195 (7th Cir. 1992) (seatbelt evidence admissible under North Carolina law on issue of reasonableness of defendant's conduct) *with*

Seese v. Volkswagenwerk, A.G., 648 F.2d 833 (3rd Cir.), *cert. denied* 454 U.S. 867 (1981) (seatbelt evidence not admissible under North Carolina law on issues of mitigation of damages or proximate cause).

Of course, "[a]s to questions controlled by state law, . . . conflict among the circuits is not of itself a reason for granting a writ of certiorari." *Ruhlin v. New York Life Ins. Co.*, 304 U.S. 202, 206 (1938). Petitioner points to no conflict between the circuits on any issue of federal law.

Further, even as to North Carolina law there is no true conflict between the Seventh Circuit's opinion in this case and the Third Circuit's opinion in *Seese*. In *Seese*, the Third Circuit held only that under North Carolina law seatbelt evidence was not admissible on issues of mitigation of damages and proximate cause (648 F.2d at 842); in this case, the Seventh Circuit held seatbelt evidence admissible on a different issue, the defendant's due care in designing a reasonably crashworthy vehicle (965 F.2d at 200).

Further, even if there were a conflict, the Seventh Circuit's decision is expressly based on a North Carolina decision issued after *Seese*, *Hagwood v. Odom*, 88 N.C. App. 513, 364 S.E.2d 190 (1988). The Seventh Circuit characterized *Hagwood* as the "clearest articulation of North Carolina's common law rule against seatbelt evidence." 965 F.2d at 200. As the court observed, "[t]he court in *Seese* did not have the benefit of *Hagwood*, which

was decided years later, and which shows that the majority in *Seese* guessed wrong about the North Carolina rule." *Id.*[1]

Finally, there is literally no support in North Carolina law for Petitioner's argument that "evidence of seatbelt usage is not admissible in any civil action for any reason." (Petition at 7) The North Carolina statute which Petitioner cites (N.C. Gen. Stat. § 20-135.2A(d)) is not even applicable to this case, and the North Carolina cases hold *only* that seatbelt evidence is not admissible on issues of contributory negligence and mitigation of damages. *Miller v. Miller*, 273 N.C. 228, 160 S.E.2d 65 (1968); *Hagwood v. Odom*, 88 N.C. App. 513, 364 S.E.2d 190 (1988). The jury in this case was expressly instructed not to consider the seatbelt evidence for these purposes. (T. 11 at 168)

It is not unusual for evidence which is inadmissible for one purpose to be admitted for other purposes. In this case, seatbelt evidence was expressly admitted for one purpose only: to rebut Petitioner's claim that Ford failed to design a reasonably crashworthy vehicle. Courts which have addressed the question in published opinions have uniformly concluded that seatbelt evidence is admissible for this purpose. *E.g. Daly v. General Motors Corp.*, 20 Cal. 3d 725, 144 Cal. Rptr. 380, 575 P.2d 1162 (1978); *LaHue v. General Motors Corp.*, 716 F. Supp. 407, 417-418 (W.D. Mo.

---

[1] Thus, Petitioner's assertion (Petition at 8) that "[t]he Seventh Circuit chose to ignore North Carolina substantive law" is wrong; the Seventh Circuit's decision was expressly based on the most recent articulation of North Carolina substantive law.

1989). Indeed, the Michigan Supreme Court has concluded that "[n]o reason, even arguably sound, exists for excluding such evidence on this liability issue." *Lowe v. Estate Motors Ltd.*, 428 Mich. 439, 410 N.W.2d 706, 720 (1987). Nothing in North Carolina law even suggests that North Carolina would nevertheless exclude seatbelt evidence even where it is indisputably relevant to the defendant's liability in a crashworthiness claim.

II.

CERTIORARI IS NOT APPROPRIATE TO DETERMINE WHETHER THE SEVENTH CIRCUIT CORRECTLY APPLIED STATE CHOICE OF LAW RULES

Petitioner's third reason for granting the writ also asks this Court to resolve issues of state law: whether Florida choice of law rules required application of Illinois product liability law to this case, and if so whether Illinois strict liability law differs significantly from North Carolina negligence law. Petitioner says nothing which would justify use of this Court's time to decide issues of Florida, Illinois, and North Carolina law.

An alleged conflict between a Court of Appeals decision and applicable state law has not been among the listed reasons for granting certiorari since 1980, when it was eliminated from Sup. Ct. R. 17 (now Sup. Ct. R. 10). In any event, the Seventh Circuit correctly determined that Florida choice of law principles required application of North Carolina law.

The Seventh Circuit observed that in Florida, "despite the inroads that 'interest analysis' and 'most significant relationship' inquiry have made . . . , the

presumption remains that the law of the state in which the accident occurred governs tort claims." 965 F.2d at 197. This is undeniably a correct statement of Florida law. The Florida Supreme Court has adopted the choice of law methodology of the Restatement (Second) of Conflict of Laws, under which the law of the place of injury presumptively applies unless some other state has a more significant relationship to the occurrence and the parties. *Bishop v. Florida Specialty Paint Co.*, 389 So. 2d 999 (Fla. 1980), adopting Restatement (Second) of Conflict of Laws § 146. In *Bishop*, the Florida Supreme Court expressly recognized that "[t]he state where the injury occurred would, under most circumstances, be the decisive consideration in determining the applicable choice of law." *Id.* at 1001.

In later cases, the Florida Supreme Court reaffirmed the place of injury as the "decisive" and "controlling" consideration in most cases. *State Farm Mut. Auto. Ins. Co. v. Olsen*, 406 So. 2d 1109 (Fla. 1981). In that case, the court held that Illinois law applied because the accident happened in Illinois, even though the action was brought in Florida, the decedent was a Florida resident, and the defendant insurance company had issued the policy in Florida. *Accord Hertz Corp. v. Piccolo*, 453 So. 2d 12, 14 (Fla. 1984) (place of injury "clearly . . . has a more significant relationship to the issue").

The injury in this case occurred in North Carolina. Therefore, Florida choice of law rules clearly require application of North Carolina law unless some other state has a more significant relationship to the occurrence and the parties. No other state has such a relationship. North

Carolina was not merely the place of the injury. As the trial court correctly observed,

> [t]he alleged conduct of the defendants had its effect upon the Plaintiff in North Carolina. The Defendants placed the allegedly defective automobile into the consumer market in North Carolina, and the automobile passed into the possession of the owners in North Carolina. The Defendants are engaged in doing business in North Carolina, and the Plaintiff was living in the State of North Carolina at the time of the accident.

(Petition at A30-31).

Petitioner relies upon only one contact with Illinois to support her argument that Illinois law applies: Petitioner's alleged status as a resident of Illinois. At the time of the accident, however, Petitioner was not residing in Illinois; rather, as the trial court noted, she "was living for an indeterminate time in North Carolina with her sister's family." (Petition at A24) Thus, Petitioner at the time was at least a temporary resident of North Carolina. *See Proprietors Ins. Co. v. Valsecchi*, 435 So. 2d 290 (Fla. App. 1983), *later appealed* 502 So. 2d 1310 (Fla. App. 1987) (treating college students from other states as Florida residents for choice of law purposes).

Even assuming that Petitioner may be treated exclusively as an Illinois resident, however, the residence of *one* of the parties is not sufficient under Florida law to displace the place of injury as the controlling consideration. As noted above, the decedent in *State Farm* was a Florida resident, and the applicable insurance policy was

issued in Florida, but the Florida Supreme Court nevertheless concluded that the place of injury, Illinois, "[c]ertainly . . . has the most significant relationship with the occurrence since the accident happened there." 406 So. 2d at 1111.

In any event, as the Seventh Circuit observed, any error would be harmless. The only difference which Petitioner has identified between the law of Illinois and the law of North Carolina is that the former recognizes strict liability while the latter does not. The Seventh Circuit held that there appeared to be little difference between Illinois strict liability law and North Carolina negligence law in cases of this nature. Even if this were incorrect, there is little difference between strict liability recognized in Illinois and breach of implied warranty recognized in North Carolina.

Breach of implied warranty under North Carolina law – like strict liability under Illinois law – requires proof that the product is defective. *Morrison v. Sears, Roebuck & Co.*, 319 N.C. 298, 354 S.E.2d 495, 497 (1987); *Suvada v. White Motor Co.*, 32 Ill.2d 612, 210 N.E.2d 182 (1965). Petitioner's breach of implied warranty claim under North Carolina law was submitted to and rejected by the jury in this case. By rejecting the implied warranty claim, the jury necessarily found either that the vehicle was not defective or that any defect that may have existed did not cause Petitioner's injuries. Either finding would be equally fatal to a strict liability claim under Illinois law. Thus, Petitioner suffered no prejudice from the failure to submit a redundant strict liability claim.

CONCLUSION

It is apparent from the preceding discussion that Petitioner has not asked this Court to review or decide any questions of federal law. Rather, she asks this Court to embroil itself in issues of product liability and choice of law under the laws of Florida, Illinois, and North Carolina. Therefore, certiorari should be denied.

Respectfully submitted,

JOHN M. THOMAS
Office of the General Counsel
Ford Motor Company
Three Parklane Boulevard
1500 Parklane Towers West
Dearborn, MI 48126
(313) 322-6743

Counsel for Respondents

APPENDIX A

RULE 29.1 LIST OF SUBSIDIARY COMPANIES

Ford Motor Company has no parent corporation. The following is a list of domestic and foreign companies in which Ford Motor Company owns a significant (not necessarily controlling) interest, but which are not wholly-owned by Ford:

Autolatina America, Inc.
Dobco Life Insurance Company
Ford Holdings
The Hertz Corporation

Argentina

Autolatina Argentina S.A. de Ahorro Para Fines Determinados
Invercred Compania Financiera S.A.
Transax Socieded Anonima, Comercial, Industrial y Financiera
Volkswagen Inversiones S.A.
Volkswagen Sociedad Anonima de Ahorro Para Fines Determinados

Australia

Australian Road Credit Limited
Foral Service Proprietary Limited
Ford Motor Company of Australia Limited
Ford Sales Company of Australia Limited

Belgium

Ford Credit N.V.
Ford Motor Company (Belgium) N.V.

Brazil

Apolo Administradora de Bens S/C Ltda.
Autolatina Brasil S.A.
Autolatina Distribuidora de Titulos e Valores Mobiliaros Ltda.

Autolatina Financiadora S.A. – Credito, Financiamento e Inves
Autolatina Leasing S/A – Arrandamento Mercantil
Autolatina Previdencia Privada
Autolatina S.A.
Consorcio Nacional Ford Ltda.
Consorcio Nacional Volkswagen Ltda.
Ford Brasil S.A.
Ford Distribudora de Productos de Petroleo Ltda.
Fundacao Autolatina
Inter-Locadora S/A
Sociedade Paulista de Aparelhos Domesticos "SPAD" Ltda.
Volkswagen Factoring Fomento Comercial S/A

Canada

Ford Motor Company of Canada, Limited

Denmark

Ford Credit A/S
Ford Motor Company A/S

England

A C Cars Limited
Aston Martin (RDP) Limited
Aston Martin Finance Limited
Aston Martin Lagonda Design Limited
Aston Martin Lagonda Limited
Aston Martin Lagonda U.S.A., Inc.
Aston Martin Sales Limited
Lagonda Properties Limited

Finland

Oy FORD Ab
Oy Ford Credit Rahoitus

Holland

Ford Nederland B.V.

Japan

Japan Climate Systems Corporation * CCD *

Mexico

Altec Electronica Chihuahua, S.A. de C.V. *ED*

Netherlands

Ford Credit B.V.

Norway

Ford Motor Norge A.S.

Singapore

Ford Motor Company Private Limited

Spain

Ford Credit S.A.

Sweden

Ford Credit AB
Ford Motor Company Aktiebolag
Ford Vagnskadegaranti AB

Switzerland

Ford Credit S.A.
Ford Motor Company (Switzerland) S.A.

Taiwan

Ford Taiwan Services, Limited

Venezuela

Ford Motor Credit S.A.